

## **2013 DRAFTING REQUEST**

### **Bill**

Received: **9/12/2012** Received By: **gmalaise**  
Wanted: **As time permits** Same as LRB:  
For: **Administration-Budget 6-2288** By/Representing: **Major**  
May Contact: Drafter: **gmalaise**  
Subject: **Children - TPR and adoption** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email:  
Carbon copy (CC) to:

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### **Pre Topic:**

DOA:.....Major, BB0186 -

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### **Topic:**

Adoption assistance and subsidized guardianships

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	gmalaise 10/17/2012	evinz 10/2/2012	rschluet 10/2/2012	_____	sbasford 10/2/2012		State S&L
/1	gmalaise 1/4/2013	evinz 1/9/2013	rschluet 1/9/2013	_____	srose 10/18/2012		State S&L
/2	gmalaise 1/23/2013	evinz 1/12/2013	rschluet 1/14/2013	_____	mbarman 1/14/2013		State S&L
/3	gmalaise	evinz	rschluet	_____	mbarman		State

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	2/5/2013	1/24/2013	1/24/2013	_____	1/24/2013		S&L
/4	gmalaize 2/13/2013	evinz 2/5/2013	phenry 2/6/2013	_____ _____	sbasford 2/6/2013		State S&L
/5		evinz 2/13/2013	rschluet 2/13/2013	_____ _____	mbarman 2/13/2013		State S&L

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/3	gmalaise	evinz	rschluet	_____	mbarman		State

*[Handwritten signatures and initials over the Drafting History table]*

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15 rev 2/13/13

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/3		evinz	rschluet	_____	mbarman		State

Vers. Drafted

Reviewed

1/24/2013

Typed

1/24/2013

Proofed

\_\_\_\_\_

Submitted

1/24/2013

Jacketed

Required

S&L

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1/4 rev 2/5/13

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Wanted: As time permits

Companion to LRB:

For: Administration-Budget 6-2288

By/Representing: Major

May Contact:

Drafter: gmalaise

Subject: Children - TPR and adoption

Addl. Drafters:

Extra Copies:

Submit via email: YES

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Carbon copy (CC) to:

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/1		evinz 10/18/2012	10/18/2012	_____	srose 10/18/2012		State S&L

FE Sent For:

1/2 elev 1/11/13

&lt;END&gt;



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 Extra Copies:

Submit via email: **YES**  
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 Carbon copy (CC) to:

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## Topic:

Adoption assistance and subsidized guardianships

## Instructions:

See attached

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FE Sent For:

<END>

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Received: <b>9/12/2012</b>	Received By: <b>gmalaise</b>
Wanted: <b>As time permits</b>	Companion to LRB:
For: <b>Children and Families 1-4349</b>	By/Representing: <b>Bob Nikolay</b>
May Contact:	Drafter: <b>gmalaise</b>
Subject: <b>Children - TPR and adoption</b>	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**  
 Requester's email: **robert.nikolay@wisconsin.gov**  
 Carbon copy (CC) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Adoption assistance

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### **Instructions:**

See attached

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### **Drafting History:**

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/P1	gmalaise 9/20/2012	evinz 10/2/2012	10/2/2012	_____	sbasford 10/2/2012		State S&L

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Subject: **Children - TPR and adoption** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **robert.nikolay@wisconsin.gov**  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Adoption assistance

**Instructions:**

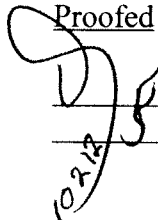
See attached

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/P1 gmalaize

/pl eev 9/23/12  
/PI sac 9/28/12



FE Sent For:

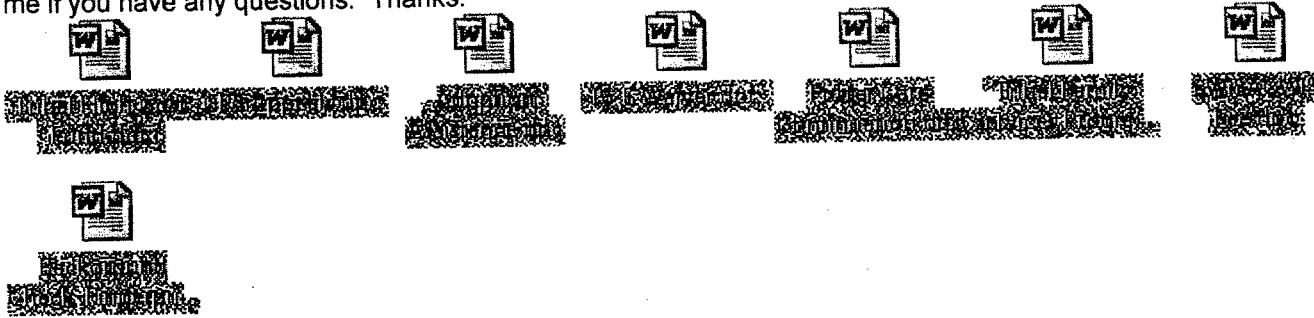
<END>

## Malaise, Gordon

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**From:** Nikolay, Robert A - DCF <Robert.Nikolay@wisconsin.gov>  
**Sent:** Wednesday, September 12, 2012 12:22 PM  
**To:** Malaise, Gordon  
**Cc:** Hanaman, Cathlene  
**Subject:** FW: 2013-15 Biennial Budget Drafting Requests for DCF

Gordon,  
Attached are biennial budget drafting requests related to Chapter 48 and Chapter 20 Program 1 in DCF. Please contact me if you have any questions. Thanks.



Bob Nikolay  
Budget Director  
Wisconsin Department of Children & Families  
(608) 261-4349

**Department of Children and Families  
2013-15 Biennial Budget  
Statutory Language Request**

**Topic:** Adoption Assistance

**Current Language:**

*Adoption Assistance Payment Levels.* Current language at s. 48.623 (subsidized guardianships) and s. 48.975 (adoption assistance) provides that payments under these programs for maintenance for the child shall equal the amount received for the month immediately preceding the month the guardianship order was granted or the adoption assistance agreement was signed, or a lesser amount if agreed to by the guardian or prospective adoptive parents.

*Adoption Assistance for "At-Risk" Children.* Current language at s. 48.975(3)(a)3 allows children who are "at risk" of developing a moderate to intensive level of special needs to be eligible for the Special Needs Adoption Program, whether or not they were in the public child welfare system or a private adoption program.

*Subsidized Guardianship for State Foster Care Cases.* Under current language at s. 48.43(7), the Department is guardian for those children for whom parental rights have been terminated and adoption has not yet taken place. If an adoption is not finalized after two years, these cases revert back to county in where the termination took place. Current law does not permit the state to transfer these cases to subsidized guardianship.

**Proposed Change:**

Modify the language in the subsidized guardianship and adoption assistance appropriations to provide that the payments under these programs "may be up to" the amount received for the child at the time the adoption assistance agreement is signed or the guardianship order was granted, which is consistent with federal regulations.

Modify the language to restrict at-risk eligibility for Adoption Assistance to only children that were in the public child welfare system.

Modify the language to allow cases to be transferred to Subsidized Guardianship if an adoption has not been finalized after 2 years

**Justification:**

*Adoption Assistance Payment Levels.* When a child's parental rights are terminated and a child enters the Adoption Assistance program, the Department has up to 30 days to determine the child's pre-adoptive foster care payment. Prior to the adoption's finalization, the child's rate is re-evaluated using a national assessment tool called the Child and Adolescent Needs and Strengths (CANS). Specifically, Department uses the adoption assistance CANS-related

algorithm in order to determine whether or not the rate will cover all of the child's needs until the child reaches age 18, 19, or 21 based on the child's individual needs and circumstances. Because the adoption assistance CANS algorithm differs from the foster care CANS algorithm, the adoption assistance payment can differ from the foster care payment.

The change from "shall be equal" to "may be up to" will clarify that the adoption assistance payment can be different than the rate paid prior to the adoption, based on the child's needs. The proposed change mirrors federal law which requires that the adoption assistance payment may be "up to" the amount of the foster care payment.

*Adoption Assistance for "At-Risk" Children.* Under current law, a privately adopted can be determined to be "at risk", which enables the child to be eligible for publicly funded Medicaid health benefits and for the parents to receive state-funded adoption assistance payments. The Department views that adoption assistance payments should be targeted exclusively for children who were adopted from the publicly-funded child welfare system. There is no public policy reason that parents who adopted a child privately should be eligible for publicly-funded adoption assistance payments.

*Subsidized Guardianship for State Foster Care Cases.* The Department is guardian for those children for whom parental rights have been terminated and adoption has not yet taken place. If an adoption is not finalized after two years, these cases revert back to county in where the termination took place. Current law does not permit the state to transfer these cases to subsidized guardianship, which is a new permanency option that was established in the 11-13 biennial budget. The proposed change updates the statutes to reflect this new practice.

**Desired Effective Date:** Upon enactment

**Agency Contact:** Bob Nikolay  
261-4349



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0067/P1

GMM

eev's

IN 9/20

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Agency Budget draft

do not gen

1

AN ACT ... relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

consecutive

CHILDREN

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, DCF may provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that the child has been residing in the home of the guardian for not less than six months, the child's situation precludes the child from returning home or from being adopted, and the guardian has a strong commitment to caring for the child permanently. Currently, the amount of a monthly subsidized guardianship payment is *equal to* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian.

This bill requires a county department or DCF, whichever is applicable, to determine the amount of a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child, but provides that that amount *may not exceed* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted.

Current law also permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child

when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Currently, the initial amount of adoption assistance for the support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption is *equivalent to* the amount of the payments for that care at the time the adoption assistance agreement is signed, and the initial amount of adoption assistance for the support of a child who was not in that care immediately prior to placement for adoption is *equivalent to* the uniform foster care rate applicable to the child at the time the adoption assistance agreement is signed, unless a lesser amount is agreed to by the proposed adoptive parents, except that the initial amount of adoption assistance for the support of a child who is at high risk of developing moderate or intensive difficulty-of-care problems is \$0, but that amount may be increased if the child develops those problems.

This bill requires DCF to determine the initial amount of adoption assistance for the support of a child based on the circumstances of the adoptive family and the needs of the child, but provides that that amount *may not exceed* the amount of the child's foster care or subsidized guardianship care payments or the uniform foster care rate, whichever is applicable, at the time the adoption assistance agreement is signed. The bill also limits adoption assistance for the support of children who are at high risk of developing moderate or intensive difficulty-of-care problems to children whose care immediately prior to placement for adoption was publicly funded.

Under current law, when the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a tribal court enters an order terminating parental rights to a child (TPR), the juvenile court or tribal court may transfer guardianship of the child to DCF, which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after the entry of the TPR order, DCF may petition the juvenile court or tribal court to transfer legal custody of the child to a county department or back to the Indian tribe. This bill permits DCF, when those circumstances apply, to enter into a subsidized guardianship agreement with a proposed guardian of the child and to petition the juvenile court or tribal court for the appointment of that individual as the guardian of the child.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 48.43<sup>x</sup> (7) of the statutes is renumbered 48.43 (7) (intro.) and  
2           amended to read:



1 48.43 (7) (intro.) If the agency specified under sub. (1) (a) is the department and  
2 a permanent adoptive placement is not in progress 2 years after entry of the order,  
3 the department may ~~petition~~ do any of the following:

4 (b) Petition the court to transfer legal custody of the child to a county  
5 department, except that the department may not petition the court to transfer to a  
6 county department legal custody of a child who was initially taken into custody  
7 under s. 48.195 (1). The court shall transfer the child's legal custody to the county  
8 department specified in the petition. The department shall remain the child's  
9 guardian.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237; 2005 a. 232, 293, 296; 2007 a. 20, 199; 2009 a. 28, 79, 94; 2011 a. 181, 258; s. 13.92 (2) (i).

10 **SECTION 2.** 48.43 (7) (a) of the statutes is created to read:

11 48.43 (7) (a) Enter into a subsidized guardianship agreement under s. 48.623  
12 (2) with a proposed guardian of the child and petition the court for the appointment  
13 of that individual as the guardian of the child under s. 48.977 (2). △

14 **SECTION 3.** 48.48 (3m) (d) of the statutes is amended to read:

15 48.48 (3m) (d) The tribal court has signed a written contract that addresses  
16 federal and state law and that provides that the tribal court will accept the return  
17 of the legal custody or the legal custody and guardianship of the child if the  
18 department petitions the tribal court to do so under s. 48.485 (2) (b).

History: 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 833m, 834, 2102 (20) (a); 1979 c. 221, 300; 1983 a. 27 s. 2202 (20); 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 135, 176; 1985 a. 332 s. 251 (3); 1987 a. 339; 1989 a. 31, 107, 359; 1991 a. 316; 1993 a. 16, 375, 385, 446, 491; 1995 a. 27 ss. 2526 to 2534m, 9126 (19), 9145 (1); 1995 a. 77; 1997 a. 27, 35, 80, 105, 292; 1999 a. 9; 2001 a. 38, 59, 69; 2005 a. 25, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180, 185; 2011 a. 258; s. 35.17 correction in (17) (c) 3.

19 **SECTION 4.** 48.485 of the statutes is renumbered 48.485 (1) and amended to  
20 read:

21 48.485 (1) If the department accepts guardianship or legal custody or both from  
22 a tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive  
23 placement for the child.

Fix  
Component

Transfer of Indian children to department for adoption.

(B)

1           (2) If a permanent adoptive placement is not in progress within 2 years after  
2 entry of the termination of parental rights order by the tribal court, the department  
3 may ~~petition~~ do any of the following:

4           (b) Petition the tribal court to transfer legal custody or guardianship of the  
5 Indian child back to the Indian tribe, except that the department may not petition  
6 the tribal court to transfer back to an Indian tribe legal custody or guardianship of  
7 an Indian child who was initially taken into custody under s. 48.195 (1).

History: 1989 a. 31; 2005 a. 296; 2009 a. 94.

8           **SECTION 5.** 48.485 (2) (a) of the statutes is created to read:

9           48.485 (2) (a) Enter into a subsidized guardianship agreement under s. 48.623  
10 (2) with a proposed guardian of the child and petition the tribal court for the  
11 appointment of that individual as the guardian of the child under a tribal law that  
12 is substantially similar to s. 48.977 (2).

13           **SECTION 6.** 48.623 (3) (b) of the statutes is amended to read:

14           48.623 (3) (b) The county department or, in a county having a population of  
15 750,000 or more, the department shall determine the amount of a monthly payment  
16 under sub. (1) or (6) for the care of a child ~~shall equal~~ based on the circumstances of  
17 the guardian and the needs of the child. That amount may not exceed the amount  
18 received under s. 48.62 (4) by the guardian of the child for the month immediately  
19 preceding the month in which the guardianship order was granted ~~or a lesser amount~~  
20 ~~if agreed to by the guardian and specified in the agreement under sub. (2) (b).~~ A  
21 guardian or an interim caretaker who receives a monthly payment under sub. (1) or  
22 (6) for the care of a child is not eligible to receive a payment under s. 48.57 (3m) or  
23 (3n) or 48.62 (4) for the care of that child.

History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623.

24           **SECTION 7.** 48.975 (3) (a) 1. of the statutes is amended to read:

1           48.975 (3) (a) 1. Except as provided in subd. 3., for support of a child who was  
2   in foster care or subsidized guardianship care immediately prior to placement for  
3   adoption, the department shall determine the initial amount of adoption assistance  
4   for maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive  
5   family and the needs of the child. That amount may not exceed the amount of that  
6   the child's foster care or subsidized guardianship care payment at the time that the  
7   agreement under sub. (4) (a) is signed ~~or a lesser amount if agreed to by the proposed~~  
8   ~~adoptive parents and specified in that agreement.~~

History: 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 ~~a. 31~~ 16, 446; 1997 a. 308; 2005 a. 25; 2009 a. 28; 2011 a. 32.

9           **SECTION 8.** 48.975 (3) (a) 2. of the statutes is amended to read:

10           48.975 (3) (a) 2. Except as provided in subd. 3., for support of a child not in foster  
11   care or subsidized guardianship care immediately prior to placement for adoption,  
12   the department shall determine the initial amount of adoption assistance for  
13   maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive family  
14   and the needs of the child. That amount may not exceed the uniform foster care rate  
15   applicable to the child that is in effect at the time that the agreement under sub. (4)  
16   (a) is signed ~~or a lesser amount if agreed to by the proposed adoptive parents and~~  
17   ~~specified in that agreement.~~

History: 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446; 1997 a. 308; 2005 a. 25; 2009 a. 28; 2011 a. 32.

18           **SECTION 9.** 48.975 (3) (a) 3. of the statutes is amended to read:

19           48.975 (3) (a) 3. For support of a child who is defined under rules promulgated  
20   by the department under sub. (5) (b) as a child with special needs based solely on  
21   being at high risk of developing moderate or intensive difficulty-of-care problems  
22   ~~and whose care immediately prior to placement for adoption was publicly funded,~~  
23   initial amount of adoption assistance for maintenance shall be \$0.

History: 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446; 1997 a. 308; 2005 a. 25; 2009 a. 28; 2011 a. 32.

24           **SECTION 9306. Initial applicability; Children and Families.**

*Not scored in electronic copy. 1/23/13*  
The department may provide adoption assistance for the support of  
a child under this subsection only if the child's care immediately  
prior to placement for adoption was publicly funded.

**(END)**

**Malaise, Gordon**

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**From:** Hanaman, Cathlene  
**Sent:** Wednesday, October 17, 2012 3:40 PM  
**To:** Malaise, Gordon  
**Subject:** FW: [Possible SPAM] Statutory Language Drafting Request - BB0186  
**Importance:** Low

**From:** [katrina.major@wisconsin.gov](mailto:katrina.major@wisconsin.gov) [<mailto:katrina.major@wisconsin.gov>]  
**Sent:** Wednesday, October 17, 2012 3:36 PM  
**To:** Hanaman, Cathlene  
**Cc:** Kraus, Jennifer - DOA; Major, Katrina L - DOA; Thornton, Scott - DOA  
**Subject:** [Possible SPAM] Statutory Language Drafting Request - BB0186  
**Importance:** Low

**Biennial Budget:** 2013-15

**DOA Tracking Code:** BB0186

**Topic:** adoption assistance

**SBO Team:** GGCF

**SBO Analyst:** Major, Katrina L - DOA  
**Phone:** 608-266-2288  
**E-mail:** [katrina.major@wisconsin.gov](mailto:katrina.major@wisconsin.gov)

**Agency Acronym:** DCF

**Agency Number:** 437

**Priority:** Medium

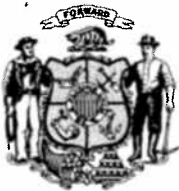
**Intent:**

adoption assistance payments, at risk, subsidized guardianship as permanency

DCF draft 67

**Attachments:** False

*Please send completed drafts to [statlanguage@wisapps.wi.gov](mailto:statlanguage@wisapps.wi.gov)*



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0067/D  
GMM:ev&sa:rs

IN 1017

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1

*dentgen*  
AN ACT *f*; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**CHILDREN**

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, DCF may provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that the child has been residing in the home of the guardian for not less than six consecutive months, the child's situation precludes the child from returning home or from being adopted, and the guardian has a strong commitment to caring for the child permanently. Currently, the amount of a monthly subsidized guardianship payment is *equal to* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian.

This bill requires a county department or DCF, whichever is applicable, to determine the amount of a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child, but provides that that amount *may not exceed* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted.

Current law also permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child

when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Currently, the initial amount of adoption assistance for the support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption is *equivalent to* the amount of the payments for that care at the time the adoption assistance agreement is signed, and the initial amount of adoption assistance for the support of a child who was not in that care immediately prior to placement for adoption is *equivalent to* the uniform foster care rate applicable to the child at the time the adoption assistance agreement is signed, unless a lesser amount is agreed to by the proposed adoptive parents, except that the initial amount of adoption assistance for the support of a child who is at high risk of developing moderate or intensive difficulty-of-care problems is \$0, but that amount may be increased if the child develops those problems.

This bill requires DCF to determine the initial amount of adoption assistance for the support of a child based on the circumstances of the adoptive family and the needs of the child, but provides that that amount *may not exceed* the amount of the child's foster care or subsidized guardianship care payments or the uniform foster care rate, whichever is applicable, at the time the adoption assistance agreement is signed. The bill also limits adoption assistance for the support of children who are at high risk of developing moderate or intensive difficulty-of-care problems to children whose care immediately prior to placement for adoption was publicly funded.

Under current law, when the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a tribal court enters an order terminating parental rights to a child (TPR), the juvenile court or tribal court may transfer guardianship of the child to DCF, which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after the entry of the TPR order, DCF may petition the juvenile court or tribal court to transfer legal custody of the child to a county department or back to the Indian tribe. This bill permits DCF, when those circumstances apply, to enter into a subsidized guardianship agreement with a proposed guardian of the child and to petition the juvenile court or tribal court for the appointment of that individual as the guardian of the child.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 48.43 (7) of the statutes is renumbered 48.43 (7) (intro.) and  
2 amended to read:

1           48.43 (7) (intro.) If the agency specified under sub. (1) (a) is the department and  
2           a permanent adoptive placement is not in progress 2 years after entry of the order,  
3           the department may ~~petition~~ do any of the following:

4           (b) Petition the court to transfer legal custody of the child to a county  
5           department, except that the department may not petition the court to transfer to a  
6           county department legal custody of a child who was initially taken into custody  
7           under s. 48.195 (1). The court shall transfer the child's legal custody to the county  
8           department specified in the petition. The department shall remain the child's  
9           guardian.

10          **SECTION 2.** 48.43 (7) (a) of the statutes is created to read:

11          48.43 (7) (a) Enter into a subsidized guardianship agreement under s. 48.623  
12          (2) with a proposed guardian of the child and petition the court for the appointment  
13          of that individual as the guardian of the child under s. 48.977 (2).

14          **SECTION 3.** 48.48 (3m) (d) of the statutes is amended to read:

15          48.48 (3m) (d) The tribal court has signed a written contract that addresses  
16          federal and state law and that provides that the tribal court will accept the return  
17          of the legal custody or the legal custody and guardianship of the child if the  
18          department petitions the tribal court to do so under s. 48.485 (2) (b).

19          **SECTION 4.** 48.485 of the statutes is amended to read:

20          **48.485 Transfer of Indian children to department for adoption. (1)** If  
21          the department accepts guardianship or legal custody or both from a tribal court  
22          under s. 48.48 (3m), the department shall seek a permanent adoptive placement for  
23          the child.



## SECTION 4

1       **(2)** If a permanent adoptive placement is not in progress within 2 years after  
2 entry of the termination of parental rights order by the tribal court, the department  
3 may ~~petition~~ do any of the following:

4       **(b) Petition** the tribal court to transfer legal custody or guardianship of the  
5 Indian child back to the Indian tribe, except that the department may not petition  
6 the tribal court to transfer back to an Indian tribe legal custody or guardianship of  
7 an Indian child who was initially taken into custody under s. 48.195 (1).

8       **SECTION 5.** 48.485 (2) (a) of the statutes is created to read:

9       48.485 **(2)** (a) Enter into a subsidized guardianship agreement under s. 48.623  
10 (2) with a proposed guardian of the child and petition the tribal court for the  
11 appointment of that individual as the guardian of the child under a tribal law that  
12 is substantially similar to s. 48.977 (2).

13       **SECTION 6.** 48.623 (3) (b) of the statutes is amended to read:

14       48.623 **(3)** (b) The county department or, in a county having a population of  
15 750,000 or more, the department shall determine the amount of a monthly payment  
16 under sub. (1) or (6) for the care of a child ~~shall equal~~ based on the circumstances of  
17 the guardian and the needs of the child. That amount may not exceed the amount  
18 received under s. 48.62 (4) by the guardian of the child for the month immediately  
19 preceding the month in which the guardianship order was granted ~~or a lesser amount~~  
20 ~~if agreed to by the guardian and specified in the agreement under sub. (2) (b).~~ A  
21 guardian or an interim caretaker who receives a monthly payment under sub. (1) or  
22 (6) for the care of a child is not eligible to receive a payment under s. 48.57 (3m) or  
23 (3n) or 48.62 (4) for the care of that child.

24       **SECTION 7.** 48.975 (3) (a) 1. of the statutes is amended to read:

1           48.975 (3) (a) 1. Except as provided in subd. 3., for support of a child who was  
2   in foster care or subsidized guardianship care immediately prior to placement for  
3   adoption, the department shall determine the initial amount of adoption assistance  
4   for maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive  
5   family and the needs of the child. That amount may not exceed the amount of ~~that~~  
6   the child's foster care or subsidized guardianship care payment at the time that the  
7   agreement under sub. (4) (a) is signed ~~or a lesser amount if agreed to by the proposed~~  
8   ~~adoptive parents and specified in that agreement.~~

9           **SECTION 8.** 48.975 (3) (a) 2. of the statutes is amended to read:

10          48.975 (3) (a) 2. Except as provided in subd. 3., for support of a child not in foster  
11   care or subsidized guardianship care immediately prior to placement for adoption,  
12   the department shall determine the initial amount of adoption assistance for  
13   maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive family  
14   and the needs of the child. That amount may not exceed the uniform foster care rate  
15   applicable to the child that is in effect at the time that the agreement under sub. (4)  
16   (a) is signed ~~or a lesser amount if agreed to by the proposed adoptive parents and~~  
17   specified in that agreement.

18          **SECTION 9.** 48.975 (3) (a) 3. of the statutes is amended to read:

19          48.975 (3) (a) 3. For support of a child who is defined under rules promulgated  
20   by the department under sub. (5) (b) as a child with special needs based solely on  
21   being at high risk of developing moderate or intensive difficulty-of-care problems,  
22   the initial amount of adoption assistance for maintenance shall be \$0. The  
23   department may provide adoption assistance for the support of a child under this  
24   subdivision only if the child's care immediately prior to placement for adoption was  
25   publicly funded.

**SECTION 9306. Initial applicability; Children and Families.**

(1) SUBSIDIZED GUARDIANSHIP AND ADOPTION ASSISTANCE AGREEMENTS. The treatment of sections 48.623 (3) (b) and 48.975 (3) (a) 1., 2., and 3. of the statutes first applies to a subsidized guardianship agreement or an adoption assistance agreement entered into or amended on the effective date of this subsection.

(END)

## Malaise, Gordon

---

**From:** Major, Katrina L - DOA <Katrina.Major@wisconsin.gov>  
**Sent:** Friday, December 28, 2012 9:54 AM  
**To:** Malaise, Gordon  
**Cc:** Kraus, Jennifer - DOA  
**Subject:** sgaafc draft

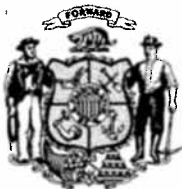
Hi Gordon,

DCF requested a few changes on the draft for subsidized guardianship and adoption assistance.

- 1) Allow DCF to enter into a subsidized guardianship at any time within the 2-year period when the State is guardian and custodian and to allow the county to enter into a subsidized guardianship after the state returns custody to the county.
- 2) Require all kids that get adoption assistance would have to have been in the public child welfare system or IV-E eligible, not just the at-risk kids. DCF suggests something like this: The department may provide adoption assistance for the support of a child under this section only if the child is in the guardianship of a county department or the department or a public child welfare agency of a tribe in Wisconsin or as provided in 472(a)(2)(A)(bb)(11) of the Social Security Act.

Please save a copy of the current version that you have in case we have to revert to it, because these are changes above what they requested in the budget paper. I think it is likely they will be approved, so I think it makes sense for us to get a draft that incorporates these changes.

Thanks,  
k



State of Wisconsin  
2013-2014 LEGISLATURE

EN 1/04



LRB-0067/1

GMM:eev&sa:rs

Stays

DOA:.....Major, BB0186 – Adoption assistance and subsidized guardianships

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

Already typed  
and proofed

1

AN ACT .; rela

Ar

Bureau  
ES

Under curren  
(county departmer

provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that the child has been residing in the home of the guardian for not less than six consecutive months, the child's situation precludes the child from returning home or from being adopted, and the guardian has a strong commitment to caring for the child permanently. Currently, the amount of a monthly subsidized guardianship payment is *equal to* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian.

This bill requires a county department or DCF, whichever is applicable, to determine the amount of a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child, but provides that that amount *may not exceed* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted.

Current law also permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child

services or social services  
750,000 or more, DCF may

Insert A

when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Currently, the initial amount of adoption assistance for the support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption is *equivalent to* the amount of the payments for that care at the time the adoption assistance agreement is signed, and the initial amount of adoption assistance for the support of a child who was not in that care immediately prior to placement for adoption is *equivalent to* the uniform foster care rate applicable to the child at the time the adoption assistance agreement is signed, unless a lesser amount is agreed to by the proposed adoptive parents, except that the initial amount of adoption assistance for the support of a child who is at high risk of developing moderate or intensive difficulty-of-care problems is \$0, but that amount may be increased if the child develops those problems.

This bill requires DCF to determine the initial amount of adoption assistance for the support of a child based on the circumstances of the adoptive family and the needs of the child, but provides that that amount *may not exceed* the amount of the child's foster care or subsidized guardianship care payments or the uniform foster care rate, whichever is applicable, at the time the adoption assistance agreement is signed. ~~The bill also limits adoption assistance for the support of children who are at high risk of developing moderate or intensive difficulty-of-care problems to children whose care immediately prior to placement for adoption was publicly funded.~~

Under current law, when the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a tribal court enters an order terminating parental rights to a child (TPR), the juvenile court or tribal court may transfer guardianship of the child to DCF, which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after the entry of the TPR order, DCF may petition the juvenile court or tribal court to transfer legal custody of the child to a county department or back to the Indian tribe. This bill ~~permits~~ <sup>requires</sup> DCF, when those circumstances apply, to enter into a subsidized guardianship agreement with a proposed guardian of the child and to petition the juvenile court or tribal court for the appointment of that individual as the guardian of the child.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

Seek a permanent adoptive placement for the child or to seek to

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

SECTION 1. 48.43 (7) of the statutes is renumbered 48.43 (7) (intro.) and amended to read: <sup>(The</sup>

~~Similarly, the bill requires a county department to which legal custody of a child is transferred~~ seek to enter into such an agreement and to petition for such an appointment when legal custody of a child is transferred to the county department.

① 48.43 (7) (intro.) If the agency specified under sub. (1) (a) is the department and  
2 a permanent adoptive placement is not in progress 2 years after entry of the order,  
3 the department may ~~petition~~ do any of the following:

4 (b) Petition the court to transfer legal custody of the child to a county  
5 department, except that the department may not petition the court to transfer to a  
6 county department legal custody of a child who was initially taken into custody  
7 under s. 48.195 (1). The court shall transfer the child's legal custody to the county  
8 department specified in the petition. The department shall remain the child's  
9 guardian.

10 **SECTION 2.** 48.43 (7) (a) of the statutes is created to read:

11 48.43 (7) (a) Enter into a subsidized guardianship agreement under s. 48.623  
12 (2) with a proposed guardian of the child and petition the court for the appointment  
13 of that individual as the guardian of the child under s. 48.977 (2).

14 **SECTION 3.** 48.48 (3m) (d) of the statutes is amended to read:

15 48.48 (3m) (d) The tribal court has signed a written contract that addresses  
16 federal and state law and that provides that the tribal court will accept the return  
17 of the legal custody or the legal custody and guardianship of the child if the  
18 department petitions the tribal court to do so under s. 48.485 (2) (b).

19 **SECTION 4.** 48.485 of the statutes is amended to read:

20 **48.485 Transfer of Indian children to department for adoption. (1)** If  
21 the department accepts guardianship or legal custody or both from a tribal court  
22 under s. 48.48 (3m), the department shall seek a permanent adoptive placement for  
23 the child.

1 ~~(2) If a permanent adoptive placement is not in progress within 2 years after~~  
2 ~~entry of the termination of parental rights order by the tribal court, the department~~  
3 ~~may petition do any of the following:~~

4 ~~(b) Petition the tribal court to transfer legal custody or guardianship of the~~  
5 ~~Indian child back to the Indian tribe, except that the department may not petition~~  
6 ~~the tribal court to transfer back to an Indian tribe legal custody or guardianship of~~  
7 ~~an Indian child who was initially taken into custody under s. 48.195 (1).~~

8 **SECTION 5.** 48.485 (2) (a) of the statutes is created to read:

9 48.485 (2) (a) Enter into a subsidized guardianship agreement under s. 48.623  
10 (2) with a proposed guardian of the child and petition the tribal court for the  
11 appointment of that individual as the guardian of the child under a tribal law that  
12 is substantially similar to s. 48.977 (2). *as provided in par. (a)*

13 **SECTION 6.** 48.623 (3) (b) of the statutes is amended to read:

14 48.623 (3) (b) ~~The county department or, in a county having a population of~~  
15 ~~750,000 or more, the department shall determine the amount of a monthly payment~~  
16 ~~under sub. (1) or (6) for the care of a child shall equal based on the circumstances of~~  
17 ~~the guardian and the needs of the child. That amount may not exceed the amount~~  
18 ~~received under s. 48.62 (4) by the guardian of the child for the month immediately~~  
19 ~~preceding the month in which the guardianship order was granted or a lesser amount~~  
20 ~~if agreed to by the guardian and specified in the agreement under sub. (2) (b). A~~  
21 ~~guardian or an interim caretaker who receives a monthly payment under sub. (1) or~~  
22 ~~(6) for the care of a child is not eligible to receive a payment under s. 48.57 (3m) or~~  
23 ~~(3n) or 48.62 (4) for the care of that child.~~

24 **SECTION 7.** 48.975 (3) (a) 1. of the statutes is amended to read:



1           48.975 (3) (a) 1. Except as provided in subd. 3., for support of a child who was  
2   in foster care or subsidized guardianship care immediately prior to placement for  
3   adoption, the department shall determine the initial amount of adoption assistance  
4   for maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive  
5   family and the needs of the child. That amount may not exceed the amount of ~~that~~  
6   the child's foster care or subsidized guardianship care payment at the time that the  
7   agreement under sub. (4) (a) is signed ~~or a lesser amount if agreed to by the proposed~~  
8   ~~adoptive parents and specified in that agreement.~~

9           **SECTION 8.** 48.975 (3) (a) 2. of the statutes is amended to read:

10          48.975 (3) (a) 2. Except as provided in subd. 3., for support of a child not in foster  
11   care or subsidized guardianship care immediately prior to placement for adoption,  
12   the department shall determine the initial amount of adoption assistance for  
13   maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive family  
14   and the needs of the child. That amount may not exceed the uniform foster care rate  
15   applicable to the child that is in effect at the time that the agreement under sub. (4)  
16   (a) is signed ~~or a lesser amount if agreed to by the proposed adoptive parents and~~  
17   ~~specified in that agreement.~~

18          ~~**SECTION 9.** 48.975 (3) (a) 3. of the statutes is amended to read:~~

19          ~~48.975 (3) (a) 3. For support of a child who is defined under rules promulgated~~  
20   ~~by the department under sub. (5) (b) as a child with special needs based solely on~~  
21   ~~being at high risk of developing moderate or intensive difficulty-of-care problems, ✓~~  
22   ~~the initial amount of adoption assistance for maintenance shall be \$0. The~~  
23   ~~department may provide adoption assistance for the support of a child under this~~  
24   ~~subdivision only if the child's care immediately prior to placement for adoption was~~  
25   ~~publicly funded.~~

Insert  
5-25

(1) intro and

**SECTION 9306. Initial applicability; Children and Families.**

(4)(a)

and  
48.977 (3)

(1) SUBSIDIZED GUARDIANSHIP AND ADOPTION ASSISTANCE AGREEMENTS. The treatment of sections 48.623 (3) (b) and 48.975 (3) (a) 1, 2, and 3 of the statutes first applies to a subsidized guardianship agreement or an adoption assistance agreement entered into or amended on the effective date of this subsection.

(END)

**2013-2014 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0067/2ins  
GMM.....

(INSERT 4-12)

1           **SECTION 1.** 48.43 (7) of the statutes is renumbered 48.43 (7) (a) and amended  
2 to read:

3           48.43 (7) (a) If the agency specified under sub. (1) (a) is the department and  
4 the department shall seek a permanent adoptive placement for the child or seek to  
5 enter into a subsidized guardianship agreement under s. 48.623 (2) with a proposed  
6 guardian of the child and petition the court for the appointment of that individual  
7 as the guardian of the child under s. 48.977 (2).

8           (b) If a permanent adoptive or subsidized guardianship placement is not in  
9 progress 2 years after entry of the order, the department may petition the court to  
10 transfer legal custody of the child to a county department, except that the  
11 department may not petition the court to transfer to a county department legal  
12 custody of a child who was initially taken into custody under s. 48.195 (1). The court  
13 shall transfer the child's legal custody to the county department specified in the  
14 petition. If legal custody is transferred to a county department, the county  
15 department shall seek to enter into a subsidized guardianship agreement under s.  
16 48.623 (2) with a proposed guardian of the child and petition the court for the  
17 appointment of that individual as the guardian of the child under s. 48.977 (2). The  
18 department shall remain the child's guardian until the appointment of a guardian  
19 under s. 48.977 (2).

**History:** 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237; 2005 a. 232, 293, 296; 2007 a. 20, 199; 2009 a. 28, 79, 94; 2011 a. 181, 258; s. 13.92 (2) (i).

20           **SECTION 2.** 48.485 of the statutes is renumbered 48.485 (1) and amended to  
21 read:

22           48.485 (1) If the department accepts guardianship or legal custody or both from  
23 a tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive

1 placement for the child or seek to enter into a subsidized guardianship agreement  
2 under s. 48.623 (2) with a proposed guardian of the child and petition the court for  
3 the appointment of that individual as the guardian of the child under s. 48.977 (2)  
4 or under a substantially similar tribal law.

5 (2) If a permanent adoptive placement is not in progress within 2 years after  
6 entry of the termination of parental rights order by the tribal court, the department  
7 may petition the tribal court to transfer legal custody or guardianship of the Indian  
8 child back to the Indian tribe, except that the department may not petition the tribal  
9 court to transfer back to an Indian tribe legal custody or guardianship of an Indian  
10 child who was initially taken into custody under s. 48.195 (1).

History: 1989 a. 31; 2005 a. 296; 2009 a. 94.

11 **SECTION 3.** 48.623 (1) (intro.) of the statutes is amended to read:

12 48.623 (1) ELIGIBILITY. (intro.) A county department or, ~~in a county having a~~  
13 ~~population of 750,000 or more as provided in sub. (3) (a),~~ the department shall  
14 provide monthly subsidized guardianship payments in the amount specified in sub.  
15 (3) (b) to a guardian of a child under s. 48.977 (2) or under a substantially similar  
16 tribal law if the county department or department determines that the conditions  
17 specified in pars. (a) to (d) have been met. A county department or, ~~in a county having~~  
18 ~~a population of 750,000 or more as provided in sub. (3) (a),~~ the department shall also  
19 provide those payments for the care of a sibling of such a child, regardless of whether  
20 the sibling meets the conditions specified in par. (a), if the county department or  
21 department and the guardian agree on the appropriateness of placing the sibling in  
22 the home of the guardian. A guardian of a child under s. 48.977 (2) or under a  
23 substantially similar tribal law is eligible for monthly subsidized guardianship  
24 payments under this subsection if the county department or, ~~in a county having a~~

1 ~~population of 750,000 or more, the department, whichever will be providing those~~  
2 ~~payments,~~ determines that all of the following apply:

History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623.

3 **SECTION 4.** 48.623 (3) (a) of the statutes is amended to read:

4 48.623 (3) (a) Except as provided in this paragraph, the county department  
5 shall provide the monthly payments under sub. (1) or (6). The county department  
6 shall provide those payments from moneys received under s. 48.569 (1) (d). In a  
7 county having a population of 750,000 or more or in the circumstances specified in  
8 s. 48.43 (7) (a) or 48.485 (1), the department shall provide the monthly payments  
9 under sub. (1) or (6). The department shall provide those payments from the  
10 appropriations under s. 20.437 (1) (dd) and (pd). ~~In any other county, the county~~  
11 ~~department shall provide those payments from moneys received under s. 48.569 (1)~~  
12 ~~(d).~~

History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623.

(END OF INSERT)

(INSERT 5-25)

13 **SECTION 5.** 48.975 (4) (a) of the statutes is amended to read:

14 48.975 (4) (a) Except in extenuating circumstances, as defined by the  
15 department by rule promulgated under sub. (5) (a), a written agreement to provide  
16 adoption assistance shall be made prior to adoption. An agreement to provide  
17 adoption assistance may be made only for a child who, at the time of placement for  
18 adoption, is in the guardianship of the department or ~~other agency~~ a county  
19 department authorized to place children for adoption, is in the guardianship of an  
20 American Indian tribal agency in this state, ~~or is~~ in a subsidized guardianship under

1 s. 48.623, or is otherwise eligible for adoption assistance payments under 42 USC 673

2 (a) (2) (A).

3 **History:** 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446; 1997 a. 308; 2005 a. 25; 2009 a. 28; 2011 a. 32.

3 **SECTION 6.** 48.977 (3r) of the statutes is amended to read:

4 48.977 (3r) SUBSIDIZED GUARDIANSHIP. Subsidized guardianship payments  
5 under s. 48.623 (1) may not be made to a guardian of a child unless a subsidized  
6 guardianship agreement under s. 48.623 (2) is entered into before the guardianship  
7 order is granted and the court either terminates any order specified in sub. (2) (a) or  
8 dismisses any proceeding in which the child has been adjudicated in need of  
9 protection or services as specified in sub. (2) (a). If a child's permanency plan calls  
10 for placement of the child in the home of a guardian and the provision of monthly  
11 subsidized guardianship payments to the guardian, the petitioner under sub. (4) (a)  
12 shall include in the petition under sub. (4) (b) a statement of the determinations  
13 made under s. 48.623 (1) and a request for the court to include in the court's findings  
14 under sub. (4) (d) a finding confirming those determinations. If the court confirms  
15 those determinations, appoints a guardian for the child under sub. (2), and either  
16 terminates any order specified in sub. (2) (a) or dismisses any proceeding in which  
17 the child is adjudicated to be in need of protection or services as specified in sub. (2)  
18 (a), the county department or, ~~in a county having a population of 750,000 or more,~~  
19 as provided in s. 48.623 (3) (a), the department shall provide monthly subsidized  
20 guardianship payments to the guardian under s. 48.623 (1).

**History:** 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94; 2011 a. 32, 181.

(END OF INSERT)

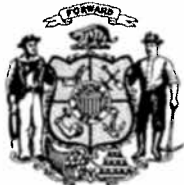
(INSERT A)

Currently, an agreement to provide adoption assistance may be made only for a child who is in the guardianship of DCF, an American Indian tribal agency in this state (tribal agency), or *another agency* authorized to place children for adoption or

new P

who is in a subsidized guardianship. This bill permits an adoption assistance agreement to be made only for a child who is in the guardianship of DCF, a tribal agency, or *a county department* authorized to place children for adoption; who is in a subsidized guardianship; or who is otherwise eligible for adoption assistance payments under Title IV-E of the federal Social Security Act.

(END OF INSERT)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0067/2

GMM:eev:rs

1  
stays

DOA:.....Major, BB0186 – Adoption assistance and subsidized guardianships  
**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

SAJ  
xref

1 AN ACT <sup>don't gen</sup>; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**CHILDREN**

Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, DCF may provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that the child has been residing in the home of the guardian for not less than six consecutive months, the child's situation precludes the child from returning home or from being adopted, and the guardian has a strong commitment to caring for the child permanently. Currently, the amount of a monthly subsidized guardianship payment is *equal to* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian.

This bill requires a county department or DCF, whichever is applicable, to determine the amount of a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child, but provides that that amount *may not exceed* the foster care payment received by the guardian for the month immediately preceding the month in which the guardianship order was granted.

Current law also permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child



when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Currently, an agreement to provide adoption assistance may be made only for a child who is in the guardianship of DCF, an American Indian tribal agency in this state (tribal agency), or *another agency* authorized to place children for adoption or who is in a subsidized guardianship. This bill permits an adoption assistance agreement to be made only for a child who is in the guardianship of DCF, a tribal agency, or *a county department* authorized to place children for adoption; who is in a subsidized guardianship; or who is otherwise eligible for adoption assistance payments under Title IV-E of the federal Social Security Act.

Currently, the initial amount of adoption assistance for the support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption is *equivalent to* the amount of the payments for that care at the time the adoption assistance agreement is signed, and the initial amount of adoption assistance for the support of a child who was not in that care immediately prior to placement for adoption is *equivalent to* the uniform foster care rate applicable to the child at the time the adoption assistance agreement is signed, unless a lesser amount is agreed to by the proposed adoptive parents, except that the initial amount of adoption assistance for the support of a child who is at high risk of developing moderate or intensive difficulty-of-care problems is \$0, but that amount may be increased if the child develops those problems.

This bill requires DCF to determine the initial amount of adoption assistance for the support of a child based on the circumstances of the adoptive family and the needs of the child, but provides that that amount *may not exceed* the amount of the child's foster care or subsidized guardianship care payments or the uniform foster care rate, whichever is applicable, at the time the adoption assistance agreement is signed.

Under current law, when the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a tribal court enters an order terminating parental rights to a child (TPR), the juvenile court or tribal court may transfer guardianship of the child to DCF, which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after the entry of the TPR order, DCF may petition the juvenile court or tribal court to transfer legal custody of the child to a county department or back to the Indian tribe. This bill requires DCF, when those circumstances apply, to seek a permanent adoptive placement for the child or to seek to enter into a subsidized guardianship agreement with a proposed guardian of the child and to petition the juvenile court or tribal court for the appointment of that individual as the guardian of the child. The bill similarly requires a county department to seek to enter into such an agreement and to petition for such an appointment when legal custody of a child is transferred to the county department.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 48.43<sup>✓</sup> (7) of the statutes is renumbered 48.43 (7) (a) and amended  
2 to read:

3           48.43 (7) (a) If the agency specified under sub. (1) (a) is the department and,  
4 the department shall seek a permanent adoptive placement for the child or seek to  
5 enter into a subsidized guardianship agreement under s. 48.623<sup>✓</sup> (2) with a proposed  
6 guardian of the child and petition the court for the appointment of that individual  
7 as the guardian of the child under s. 48.977<sup>✓</sup> (2).

8           (b) If a permanent adoptive or subsidized guardianship placement is not in  
9 progress 2 years after entry of the order, the department may petition the court to  
10 transfer legal custody of the child to a county department, except that the  
11 department may not petition the court to transfer to a county department legal  
12 custody of a child who was initially taken into custody under s. 48.195 (1). The court  
13 shall transfer the child's legal custody to the county department specified in the  
14 petition. If legal custody is transferred to a county department, the county  
15 department shall seek to enter into a subsidized guardianship agreement under s.  
16 48.623<sup>✓</sup> (2) with a proposed guardian of the child and petition the court for the  
17 appointment of that individual as the guardian of the child under s. 48.977<sup>✓</sup> (2). The  
18 department shall remain the child's guardian until the appointment of a guardian  
19 under s. 48.977<sup>✓</sup> (2).

20           SECTION 2. 48.485<sup>✓</sup> of the statutes is renumbered 48.485 (1) and amended to

21 read:

Insert  
3-19-13

1           48.485 (1) If the department accepts guardianship or legal custody or both from  
2           a tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive  
3           placement for the child or seek to enter into a subsidized guardianship agreement  
4           under s. 48.623 (2) with a proposed guardian of the child and petition the court for  
5           the appointment of that individual as the guardian of the child under s. 48.977 (2)  
6           or under a substantially similar tribal law.

7           (2) If a permanent adoptive placement is not in progress within 2 years after  
8           entry of the termination of parental rights order by the tribal court, the department  
9           may petition the tribal court to transfer legal custody or guardianship of the Indian  
10          child back to the Indian tribe, except that the department may not petition the tribal  
11          court to transfer back to an Indian tribe legal custody or guardianship of an Indian  
12          child who was initially taken into custody under s. 48.195 (1).

13          SECTION 3. 48.623 (1) (intro.) of the statutes is amended to read:

14          48.623 (1) ELIGIBILITY. (intro.) A county department or, ~~in a county having a~~  
15          ~~population of 750,000 or more~~ as provided in sub. (3) (a), the department shall  
16          provide monthly subsidized guardianship payments in the amount specified in sub.  
17          (3) (b) to a guardian of a child under s. 48.977 (2) or under a substantially similar  
18          tribal law if the county department or department determines that the conditions  
19          specified in pars. (a) to (d) have been met. A county department or, ~~in a county having~~  
20          ~~a population of 750,000 or more~~ as provided in sub. (3) (a), the department shall also  
21          provide those payments for the care of a sibling of such a child, regardless of whether  
22          the sibling meets the conditions specified in par. (a), if the county department or  
23          department and the guardian agree on the appropriateness of placing the sibling in  
24          the home of the guardian. A guardian of a child under s. 48.977 (2) or under a  
25          substantially similar tribal law is eligible for monthly subsidized guardianship

1 payments under this subsection if the county department or, ~~in a county having a~~  
2 ~~population of 750,000 or more~~, the department, whichever will be providing those  
3 payments, determines that all of the following apply:

4 **SECTION 4.** 48.623 (3) (a) of the statutes is amended to read:

5 48.623 (3) (a) Except as provided in this paragraph, the county department  
6 shall provide the monthly payments under sub. (1) or (6). The county department  
7 shall provide those payments from moneys received under s. 48.569 (1) (d). In a  
8 county having a population of 750,000 or more or in the circumstances specified in  
9 s. 48.43 (7) (a) or 48.485 (1), the department shall provide the monthly payments  
10 under sub. (1) or (6). The department shall provide those payments from the  
11 appropriations under s. 20.437 (1) (dd) and (pd). ~~In any other county, the county~~  
12 ~~department shall provide those payments from moneys received under s. 48.569 (1)~~  
13 ~~(d).~~

14 **SECTION 5.** 48.623 (3) (b) of the statutes is amended to read:

15 48.623 (3) (b) The county department or, as provided in par. (a), the department  
16 shall determine the amount of a monthly payment under sub. (1) or (6) for the care  
17 of a child shall equal based on the circumstances of the guardian and the needs of the  
18 child. That amount may not exceed the amount received under s. 48.62 (4) by the  
19 guardian of the child for the month immediately preceding the month in which the  
20 guardianship order was granted ~~or a lesser amount if agreed to by the guardian and~~  
21 ~~specified in the agreement under sub. (2) (b).~~ A guardian or an interim caretaker who  
22 receives a monthly payment under sub. (1) or (6) for the care of a child is not eligible  
23 to receive a payment under s. 48.57 (3m) or (3n) or 48.62 (4) for the care of that child.

24 **SECTION 6.** 48.975 (3) (a) 1. of the statutes is amended to read:

1           48.975 (3) (a) 1. Except as provided in subd. 3., for support of a child who was  
2           in foster care or subsidized guardianship care immediately prior to placement for  
3           adoption, the department shall determine the initial amount of adoption assistance  
4           for maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive  
5           family and the needs of the child. That amount may not exceed the amount of ~~that~~  
6           the child's foster care or subsidized guardianship care payment at the time that the  
7           agreement under sub. (4) (a) is signed ~~or a lesser amount if agreed to by the proposed~~  
8           ~~adoptive parents and specified in that agreement.~~

9           ~~✕~~  
10          SECTION 7. 48.975 (3) (a) 2. of the statutes is amended to read:

11           48.975 (3) (a) 2. Except as provided in subd. 3., for support of a child not in foster  
12           care or subsidized guardianship care immediately prior to placement for adoption,  
13           the department shall determine the initial amount of adoption assistance for  
14           maintenance ~~shall be equivalent to~~ based on the circumstances of the adoptive family  
15           and the needs of the child. That amount may not exceed the uniform foster care rate  
16           applicable to the child that is in effect at the time that the agreement under sub. (4)  
17           (a) is signed ~~or a lesser amount if agreed to by the proposed adoptive parents and~~  
18           ~~specified in that agreement.~~

19           ~~✕~~  
20          SECTION 8. 48.975 (4) (a) of the statutes is amended to read:

21           48.975 (4) (a) Except in extenuating circumstances, as defined by the  
22           department by rule promulgated under sub. (5) (a), a written agreement to provide  
23           adoption assistance shall be made prior to adoption. An agreement to provide  
24           adoption assistance may be made only for a child who, at the time of placement for  
25           adoption, is in the guardianship of the department or ~~other agency~~ a county  
             department authorized to place children for adoption, is in the guardianship of an  
             American Indian tribal agency in this state, ~~or is~~ in a subsidized guardianship under

1 s. 48.623, or is otherwise eligible for adoption assistance payments under 42 USC 673  
2 (a) (2) (A).

3 **SECTION 9.** 48.977<sup>x</sup> (3r) of the statutes is amended to read:

4 48.977 (3r) SUBSIDIZED GUARDIANSHIP. Subsidized guardianship payments  
5 under s. 48.623 (1) may not be made to a guardian of a child unless a subsidized  
6 guardianship agreement under s. 48.623 (2) is entered into before the guardianship  
7 order is granted and the court either terminates any order specified in sub. (2) (a) or  
8 dismisses any proceeding in which the child has been adjudicated in need of  
9 protection or services as specified in sub. (2) (a). If a child's permanency plan calls  
10 for placement of the child in the home of a guardian and the provision of monthly  
11 subsidized guardianship payments to the guardian, the petitioner under sub. (4) (a)  
12 shall include in the petition under sub. (4) (b) a statement of the determinations  
13 made under s. 48.623 (1) and a request for the court to include in the court's findings  
14 under sub. (4) (d) a finding confirming those determinations. If the court confirms  
15 those determinations, appoints a guardian for the child under sub. (2), and either  
16 terminates any order specified in sub. (2) (a) or dismisses any proceeding in which  
17 the child is adjudicated to be in need of protection or services as specified in sub. (2)  
18 (a), the county department or, ~~in a county having a population of 750,000 or more,~~  
19 as provided in s. 48.623 (3) (a), the department shall provide monthly subsidized  
20 guardianship payments to the guardian under s. 48.623 (1).

21 **SECTION 9306. Initial applicability; Children and Families.**

22 (1) SUBSIDIZED GUARDIANSHIP AND ADOPTION ASSISTANCE AGREEMENTS. The  
23 treatment of sections 48.623 (1) (intro.) and (3) (b), 48.975 (3) (a) 1. and 2. and (4) (a),  
24 and 48.977 (3r) of the statutes first applies to a subsidized guardianship agreement

1 or an adoption assistance agreement entered into or amended on the effective date  
2 of this subsection.<sup>✓</sup>

3 (END)

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Section #. 48.48 (3m) (d) of the statutes is amended to read:

(2)

48.48 (3m) (d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

**History:** 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 833m, 834, 2102 (20) (a); 1979 c. 221, 300; 1983 a. 27 s. 2202 (20); 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 135, 176; 1985 a. 332 s. 251 (3); 1987 a. 339; 1989 a. 31, 107, 359; 1991 a. 316; 1993 a. 16, 375, 385, 446, 491; 1995 a. 27 ss. 2526 to 2534m, 9126 (19), 9145 (1); 1995 a. 77; 1997 a. 27, 35, 80, 105, 292; 1999 a. 9; 2001 a. 38, 59, 69; 2005 a. 25, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180, 185; 2011 a. 258; s. 35.17 correction in (17) (c) 3.

(edit next)



## STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/23/13

Katie Major - DOA

Delete requirement that county seek to enter into

Subsidized guardianship agreement when custody is

Transferred back to the county under s 48.43(7)